



ATTORNEYS AT LAW

## Memo: The *Coronavirus Aid, Relief and Economic Security (CARES) Act*

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In the early hours of Wednesday, March 25, the White House and Senate leadership announced the framework of an initial agreement on a third emergency relief package responding to the COVID-19 global health pandemic. Negotiations on the package began last weekend as Senate Majority Leader Mitch McConnell (R-KY) released an underlying bill to kick-start discussions on a package aimed at providing significant economic relief to individuals and industry.

Negotiations leading up to the agreement underscored the furious pace lawmakers and their aides were under to complete a legislative package with the coronavirus quickly spreading and the economic downturn impacting all sectors of society. Despite two failed cloture votes on the initial McConnell package early in the week and threats from a few senators to hold up swift passage of the bipartisan bill, the Senate eventually passed the package, the Coronavirus Aid, Relief and Economic Security (CARES) Act (Senate amendment to H.R. 748) late Wednesday evening, sending the bill to the House. After four hours of debate (and a failed effort to require a roll call vote), the House passed the bill by voice vote Friday afternoon. The bill was signed into law by President Trump just a couple hours after its passage.

The legislation (<https://www.help.senate.gov/imo/media/doc/HEN20312.pdf>), estimated to cost \$2 trillion, is the largest authorization and appropriation of federal spending in American history and covers a vast array of federal programs, including direct financial assistance to Americans, a significant expansion of unemployment insurance, billions in aid to businesses large and small, and a new wave of critical funding for the health care industry tasked with combatting the virus.

The package as written includes two divisions. The first—Division A addresses taxation and other incentives; the second—Division B, is the emergency supplemental appropriations portion.

The following summarizes notable provisions of the package separated by stakeholders and significant issue areas. For more in-depth analysis or guidance regarding specific provisions to the package, the Bose Public Affairs Group team is well equipped to consult on these issues. Please contact the team for additional information.



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## Relief to Individuals and Families

### Direct financial assistance:

The legislation funds financial assistance from the US Treasury directly to American citizens in the form of a check or direct deposit. Payment amounts are dependent on the latest tax filings (2019 or 2018) and vary based on income levels and dependents per household.

- A full payment of \$1200 is available for every individual with a cap on singles making up to \$75,000 and married couples making up to \$150,000.
  - An additional \$500 will be available for each child per household. So a family of four would receive \$3400.
  - The value for each payment will decrease by \$5 for every \$100 earned up to \$99,000.

### Investments in Unemployment Insurance:

A total of \$260 billion will be invested in the federal unemployment insurance program for workers who have been laid off as a result of the COVID-19 pandemic.

- Pandemic Unemployment Compensation will supplement UI state benefits by \$600 per week for the duration of the state benefits (26 weeks in all but 8 states).
- Pandemic Emergency Unemployment Compensation provides an additional 13 weeks of state UI benefits.

- Pandemic Unemployment Assistance provides emergency unemployment assistance to workers not otherwise eligible for regular state UI or who have exhausted their state UI benefits for up to 39 weeks.
- The benefit will be taxable but will not impact determinations in Medicaid or CHIP eligibility.
- The bill also reduces the amount nonprofits, tribes, and government entities must reimburse states for their workers' benefits by 50%.

**Other provisions or investments to support individuals and families:**

- Supplemental Nutrition Assistance Program (SNAP) - \$15.5 billion in additional funding.
- Child Nutrition Programs- \$8.8 billion in additional funding.
- Temporary Assistance for Needy Families Program (TANF) - The bill extends authorized TANF funding through November 30, 2020.
- Emergency Solutions Grants (Housing) - \$4 billion to support additional homeless assistance, prevention, and eviction prevention assistance.
- Forbearance of Mortgage Loan Payments and Evictions - The bill establishes at least 90 days of mortgage loan payment forbearance for multifamily borrowers with a federally backed loan experiencing hardship. It also prohibits landlords from initiating any action leading to eviction for 120 days after the bill's enactment for any tenants living a unit that is insured, guaranteed, protected, or assisted by a federal mortgage or federal program.

## Municipalities

**Coronavirus Relief Fund:**

The bill allocates \$150 billion to state, tribal, territorial, and large local governments for costs associated with the coronavirus pandemic. Each state will receive a minimum of \$1.25 billion, and additional funds will be distributed based on population. Local governments with populations of more than 500,000 may directly access funds allocated to their state for costs incurred as a result of the COVID-19 public health emergency which were not accounted for in their most recent budgets. Direct payments to local governments may not exceed 45% of the total amount allocated to a given state.

**Community Development Block Grant (CDBG):**

\$5 billion in total will be provided for the CDBG program. Notably, "\$2 billion will be allocated to states and units of local governments that received an allocation under the fiscal year 2020 CDBG formula, \$1 billion will go directly to states to support a coordinated response across entitlement and non-entitlement communities, and \$2 billion will be allocated to states and units of local



government, cities and counties based on the prevalence and risk of COVID-19 and related economic and housing disruption.” The bill also does the following:

- Eliminates the cap on funds a locality can spend on public services.
- Eliminates requirement to hold in-person public hearings.
- Allows for reimbursement of any funds used for COVID-19 response activities.

#### **Economic Stabilization Fund:**

The bill establishes a \$500 billion fund that, in part, grants the U.S. Treasury the authority to purchase municipal bonds and authorize loans to assist state and local governments for coronavirus-related costs. The Federal Reserve may participate as an investor in securities that mature in greater than six months. Loans and loan guarantees to small businesses will also be included in this fund.

#### **Homeland Security and Emergency Response Funding:**

The bill invests in multiple programs managed by the Department of Homeland Security designed to assist localities and personnel on the front lines. Notable program investments include:

- Disaster Relief Fund - \$45 billion for state and local governments for reimbursable activities responding to COVID-19, such as personal protective equipment, coordination of logistics, medical response efforts, and community services.
- Assistance to Firefighter Grants - \$100 million for protective equipment for firefighters.
- Emergency Management Performance Grants - \$100 million to support coordination and communications at all levels of government.

#### **Transportation and Housing:**

The bill includes \$48.5 billion in appropriations for transportation and housing accounts to mitigate the impacts of the coronavirus. Notable investments include:

- Airports- \$10 billion for public-owned airports.
- Transit systems - \$25 billion.
- Section 8 Housing Vouchers for PHA's - \$1.935 billion.
- Elderly and Disabled rental assistance - \$65 million.

#### **Child Care Development Block Grants**

The bill allocates \$3.5 Billion to support child care programs to pay staff, establish alternative child care options as facilities temporarily close, and meet emergency staffing needs to provide access to



childcare for first responders and health care workers as they respond to the COVID-19 public health crisis.

### **Support for Law Enforcement**

The bill includes resources to support local law enforcement by funding grants to localities, which can be used to purchase personal protective equipment and other needed medical items, as well as funds to support overtime pay for police officers. A total of \$850 million will be dedicated to the Byrne-Justice Assistance Grant Program (Byrne-JAG) to carry out this purpose.

### **Election Assistance**

The bill appropriates \$400 million to states for preparation for the 2020 election cycle. These funds may be used to increase states' capacities to allow voting by mail, early voting, and online voting, along with efforts to expand voting facilities and poll worker numbers to increase the safety of in-person voting.

### **Other investments to support municipality operations:**

- ReConnect rural broadband program (Agriculture) - \$100 million.
- Economic Development Administration (Commerce) - \$1.5 billion.

## **Tribal Governments**

### **Indian Health Service (Interior)**

The bill appropriates \$1 billion to provide resources necessary to respond to the COVID-19 pandemic among Tribal communities.

### **Bureau of Indian Affairs (Interior)**

The bill grants \$453 million to support welfare assistance and other emergency response needs for tribal governments.

### **Housing**

The bill allocates \$300 million for Native American Housing Block Grants and Indian Community Development Block Grant programs to support Tribal governments and Tribally-designated housing entities.

**Bureau of Indian Education (Interior)**

The bill provides \$69 million for response efforts associated with the COVID-19 pandemic at BIE-funded schools, as well as \$20 million for Tribal colleges and universities.

**Healthcare****Addressing Supply Shortages:**

The bill aims to mobilize the federal government's support in responding to concerns over medical supply shortages, investing billions and authorizing several notable initiatives, including:

- Strategic National Stockpile - Authorizes the federal government to stockpile medical supplies needed to respond to the coronavirus.
- Requires the Food and Drug Administration (FDA) to prioritize and review drug applications to prevent a drug shortage.
- Requires drug manufacturers to report more information on the causes of supply interruption and to develop a contingency plan to ensure there is a reserve supply.
- Requires medical device manufacturers to report device shortage information to the FDA.

**Access to Health Care for Individuals Affected by COVID-19:**

The bill supports individuals infected by COVID-19. This includes several notable provisions and investments to support patients, including:

- Coverage of diagnostic testing - Mandates that all diagnostic testing for individuals is covered by private insurance plans without cost sharing and requires insurers to pay providers either the rate specified via contract or cash price if no contract exists.
- Coverage of preventive services and vaccines - Requires that free coverage without cost sharing be provided for a vaccine that has an "A" or "B" rating in the current recommendations of the United States Preventive Services Task Force.
- Healthy Start Program - Reauthorizes the Healthy Start program to provide grants that improve women's healthcare access.

**Support for Healthcare Providers:**

The bill invests billions in support for health care providers on the front lines of responding to the pandemic. Notable provisions include:

- Supplemental awards to providers - The bill appropriates \$1.32 billion in funding to community health centers for testing and treating COVID-19 patients.



- Telehealth and rural health grant programs - Reauthorizes telehealth grant programs that support the use of telehealth for patients to access care in order to prevent exposure for medical professionals and reauthorizes rural health care grant programs to bolster rural providers' ability to combat the coronavirus.
- Ready Reserve Corps and Expanding Health Professionals Deployment Ability - Establishes a Ready Reserve Corps to ensure there are enough qualified medical professionals throughout the country to treat patients and respond to COVID-19. The bill also allows volunteer medical professionals responding to COVID-19 to have liability protections and provides the Secretary of Health and Human Services (HHS) to reassign members of the National Health Service Corps to provide additional support for areas most impacted by the virus.

#### **Support for the Healthcare Workforce:**

The bill reauthorizes and provides investments for multiple programs targeted to support the healthcare workforce tasked with responding to the Coronavirus. This includes support for doctors and nurses, coordination efforts, and additional education and training for medical professionals.

#### **Health Insurance Financing Impacts:**

The bill makes changes to healthcare financing through programs that are under the jurisdiction of the Senate Finance Committee and House Energy and Commerce Committee. Notable provisions include:

- Changes to Health Savings Accounts - Allows high-deductible health plans combined with an HAS to cover telehealth services even if the patient hasn't met the deductible. The bill also allows patients to purchase over-the-counter medical products using an HSA without a prescription.
- Expands flexibility for Medicare to cover the cost telehealth and home health services.
- Increases provider funding and access through Medicare - The bill lifts the Medicare sequester until December 31, 2020 and increases the payment to hospitals treating a Medicare patient by 20%.

#### **Medicaid Provisions:**

The bill provides flexibility around the use of Medicaid to support recipients and providers in the costs associated with care related to the coronavirus. The package extends programs to support nursing home-to-home transition, delays scheduled reductions in the disproportionate share of hospital payments through November 30, 2020, and extends community mental health services demonstration.

## ***Healthcare Appropriations***

### **Medical Response Efforts:**

The bill allocates \$100 billion in grants to hospitals, suppliers, and providers to cover uncompensated healthcare services related to the coronavirus and associated lost revenue.

### **Public Health Agencies:**

The bill designates \$4.3 billion to public health agencies at the federal, state, and local levels to fund preparedness and response efforts.

- States, municipalities, territories, and tribes - \$1.5 billion for various public health activities, such as personal protective equipment purchases, testing, contact tracing, and other infection control and mitigation efforts.
- Centers for Disease Control coronavirus response - \$1.5 billion for flexible use across the CDC, including test kit production and distribution, quarantine efforts, and public information campaigns.
- The remaining \$1.3 billion will be dedicated to global disease detection and emergency response, modernizations to existing public health data infrastructure, and the Infectious Diseases Rapid Response Reserve Fund.

### **Research and Development:**

- Biomedical Advanced Research and Development Authority - Over \$27 billion to research prevention and treatment strategies, including vaccines, therapeutics, and diagnostics. These funds are distributed across the Strategic National Stockpile for key supplies, equipment, and medicine (\$16 billion); vaccine and therapeutics manufacturing and purchasing (at least \$3.5 billion); Hospital Preparedness Program (\$250 million); vaccine supply chain development; medical surge capacity improvements at health care facilities; research associated with antibiotic resistant secondary infections; and supports for digital healthcare delivery, including workforce modernization and telehealth access.
- The National Institutes of Health - \$945 million to increase understanding of the coronavirus' prevalence, transmission, and history; along with searching for new approaches to diagnosis, prevention, and treatment.
- National Institute for Innovation in Manufacturing (Commerce) - \$10 million to support development and manufacture of new medical countermeasures and biomedical supplies to combat COVID-19.

**Other provisions and investments to support the healthcare industry:**

- Department of Defense Spending to combat COVID-19 - \$10.5 billion will be provided to the Department of Defense to invest in support for manufacturing essential medical supplies under the *Defense Production Act* and to triple the capacity of military hospitals by adding 4,300 beds.
- Connected Care Pilot Program (FCC-Financial Services) - \$200 million to support telehealth efforts by health care providers.
- Indian Health Service (Interior) - \$1 billion for resources to respond to COVID-19 among tribal communities.
- Veterans Affairs - \$19.57 billion to ensure veterans have the healthcare services needed in response to COVID-19.
- Health Professions Opportunity Grants (HPOG) - The bill extends the HPOG program through November 30, 2020 to help low-income people obtain training in high-demand health care jobs in response to COVID-19.
- Administration for Community Living - \$955 million across several services, including protections for seniors and individuals with disabilities, supports for family caregivers, nutrition programs, and home and community based services.
- Substance Abuse and Mental Health Services Administration - \$425 million to fund increased access to mental health services at Community Behavioral Health Clinics, suicide prevention programs, outreach to individuals experiencing homelessness, and other areas of significant need.
- Health Resources and Services Administration - \$275 million, divided across the Ryan White HIV/AIDS program (\$90 million); and rural supports (\$185 million) for critical access hospitals, tribal health and telehealth programs, and poison control centers.
- Centers for Medicare and Medicaid Services - \$200 million for infection control within nursing homes, including through funding states' efforts to prevent the spread of coronavirus in nursing homes.

## Education

The bill invests \$30.75 billion in an Education Stabilization Fund to provide states, districts, and higher education institutions with relief from the coronavirus impacts. From this funding one half of 1% is set aside for the Bureau of Indian Education and \$3 billion is set aside for grants to governors in impacted areas and administrative expenses.

### Governor's Emergency Fund

\$3 billion (9.8%) is allocated to Governor's discretion for grants to local districts as well as institutions of higher education (not restricted to public institutions) that are deemed most impacted by COVID-19 to continue educational support and ongoing operations. This allocation for Governors will be distributed based on 60% of population ages 5-24 and 40% on ESEA Title I children).

### Elementary and Secondary Education:

\$13.5 billion in formula grants (43.9%) will be provided to states based on relative share of the Title I formula. 90% of state funds will then be distributed to local education agencies to fund district-level responses to the coronavirus.

The legislation grants the Secretary of Education with additional waiver authority to waive certain requirements of states and districts under the Elementary and Secondary Education Act, except for civil rights laws.

### Higher Education:

The phase three package offers \$14.25 billion (46.3%) of emergency relief for institutions of higher education. Congress notes the funds are to assist institutions in easing the impact of lost revenue, supporting technology costs as institutions transition to online courses, and providing supports for students for food, housing, child care, and technology.

- Of these funds 90% (\$12.558 billion) must be allocated directly to institutions through the Title IV distribution system.
  - Institutional amounts are calculated using 75% of full-time equivalent enrollment of Pell students at an institution and 25% of the institutional award is calculated using full-time equivalent enrollment of non-Pell students.
  - Students who were exclusively online are removed from the calculation.
  - At least 50% of funds (or \$6.279 billion) awarded to institutions must be used to provide direct emergency aid to students, including "grants to students for food, housing, course materials, technology, health care, and child care."
  - Allowable uses for the institutional portion of the funds are broad, and can be used to "defray expenses for institutions of higher education, such as lost revenue, technology costs associated with a transition to distance education."
  - Recipients of funds must retain current employees to the "maximum extent practicable."

- Minority serving institutions (MSIs) are provided 7.5% (\$1.047 billion) based on Title III, Part A formula.
- An additional 2.5% (\$349 million) is reserved for grants to institutions particularly impacted by coronavirus, to be administered through the Fund for Improvement of Postsecondary Education (FIPSE) with a priority for smaller institutions and MSI grants and still have significant unmet needs.

Notable waiver provisions include:

- Campus-based aid - waives the institutional matching requirement for campus-based aid and allows institutions to award additional Supplemental Educational Opportunity Grants (SEOG) to students impacted by COVID-19.
- Federal work-study - allows institutions to continue issuing work-study payments to students even if they're unable to work due to COVID-19.
- Federal student aid flexibility - excludes the current academic term from counting toward lifetime subsidized loan eligibility and lifetime Pell Grant eligibility. The bill allows students who dropped out due to coronavirus to keep their federal student aid for the term and waives the term's satisfactory progress requirement to continue receiving federal student aid in future academic terms.
- The bill waives interest charges on federally held student loans through Sept. 30, 2020. It requires the Secretary of Education to allow deferment of student loan payments through that date, without interest being charged for that period. Any payments made by borrowers will be applied to principal.
- Flexibility for Foreign Institutions - The bill permits American students enrolled at foreign institutions to take classes via distance education or in the United States for the current and following terms without losing access to federal student loans.
- Institutional Flexibility - The package authorizes the Secretary of Education to waive or adjust allowable uses of funds for institutional grant programs so colleges are afforded flexibility in deploying federal resources to necessary functions to mitigate the impacts of COVID-19.

**Other provisions and investments to support education:**

- Basic science (Commerce) - \$6 million for the National Institute of Standards and Technology (NIST) and \$75 million for the National Science Foundation (NSF) to conduct Coronavirus research.
- Bureau of Indian Education (Interior) - \$69 million for response needs at BIE-funded schools including \$20 million for tribal colleges and universities.

- National Endowment for the Arts and Humanities (Interior) - \$150 million for grants to support museums, libraries, and arts organizations in responding to the pandemic.
- Head Start - \$750 million.
- Institute for Museum and Library Sciences - \$50 million to expand digital network access in areas that need it.
- Workforce Response - provides local workforce boards with the flexibility to use WIOA funds for online resources and rapid response activities.
- Teacher Service Obligation Changes - Teachers who did not finish the semester due to COVID-19 will continue to have the year counted as a full year of service towards TEACH grants or Teacher Loan Forgiveness.
- Graduate Medical Education Program - extends the program at current levels through November 30, 2020.

## Labor

### Paid Leave:

The bill amends the paid leave requirements associated with COVID-19 established in the Families First Coronavirus Relief Act.

- Limitations - employers are not required to pay more than \$511 daily and \$5,110 in total per employee in emergency sick leave; or \$200 daily and \$2,000 per employee to care for a quarantined individual or child.
- Office of Management and Budget - waivers for certain Executive Branch employees available for Paid Family and Paid Sick Leave are allowed for good cause.
- Rehired employees - extends paid family and medical leave to employees who were laid off on or after March 1, 2020, and rehired by the employer in certain circumstances.

### Additional Labor Provisions:

- Unemployment insurance - to the extent possible, applications for compensation and assistance must be accessible in two ways: in person, by phone, or online.
- Advance refunding of tax credits - employers may receive advance tax credits from Treasury, rather than waiting for reimbursements.
- Deadline postponement - grants the Department of Labor the authority to postpone certain ERISA (retirement) deadlines up to one year.

- Pension Plans - delays contribution deadlines for the duration of 2020 to allow single employer pension plan companies more time to meet their funding obligations; extends cooperative and small employer charity pension plans rules to charitable employers who primarily serve mothers and children.
- Federal contractors - payments continue for federal contractors who continue their work as a result of the coronavirus pandemic, due to the nature of their work or inaccessibility of duty stations.

## Relief to Industry

### **Small Business Administration (SBA):**

The bill provides \$562 billion for Economic Injury Disaster Loans (EIDL) for businesses that require financial assistance as a result of COVID-19.

- The bill includes \$10 billion in direct grants for businesses not EIDL eligible and \$17 billion for SBA intervention to fund six months-worth of SBA-backed business loans.
- The package includes a paycheck protection program to increase the government guarantee of loans under SBA to 100% and provides grants to resource partners that provide counseling, training, and education on SBA resources to small business owners affected by COVID-19.
- These loans may be used by qualified employers for payroll, rent, interest and utilities to help impacted employers retain employees and if used for such expenses within 8 weeks of receiving the loan, the loan will be forgiven in certain circumstances.
- For more details, read the Bose McKinney & Evans "CARES Act: Paycheck Protection Program Q&A" (<https://www.boselaw.com/2020/03/cares-act-paycheck-protection-program-qa/>).

### **Tax Provisions to Support Employers and Employees:**

The bill provides multiple tax credits and other provisions to support employers and their employees in responding to the pandemic. These include:

- Employee retention credit - provides a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. The credit has differing eligibility depending on each employer's circumstances.
- Employer payroll tax delay - the bill allows employers and self-employed individuals to defer payment of the employer share of the Social Security tax they are otherwise responsible for.

### **Support to Distressed Sectors of the Economy:**

The bill incorporates the *Coronavirus Economic Stabilization Act of 2020*, which provides financial assistance in the form of loans, grants, and loan guarantees to eligible businesses with significant economic impacts as a result of COVID-19. Notable provisions include:

- Treasury Exchange Stabilization Fund - provides \$500 billion to the Department of Treasury's Exchange Stabilization Fund to provide loans and loan guarantees to specific industries.
- \$454 billion of the fund will be directed to the Federal Reserve for lending to mitigate negative impacts in the financial markets. The bill stipulates additional lending requirements for business to access these loans.
- The bill disburses the remainder of the funds to hard-hit industries.
  - \$25 billion for passenger airlines.
  - \$ 4 billion for cargo airlines.
  - \$17 billion for businesses important to maintaining national security.
  - The bill authorizes the Secretary of Transportation to require air carriers receiving loans under this program to maintain scheduled service deemed necessary by the Secretary.
- The bill directs the Treasury Department to implement special lending targeted at non-profits and small businesses through the Federal Reserve to incentivize keeping workers on the payroll.
- The bill stipulates that any business receiving financial assistance through this program cannot increase the compensation of any officer or employee of the company making above \$425,000.

### **Federal Oversight of Private Industry Receiving Federal COVID-19 Assistance:**

The bill establishes oversight mechanisms to ensure federal oversight of public dollars going to industry. This includes the establishment of a Special Inspector General for Pandemic Recovery in the Department of Treasury and establishes a special Congressional Oversight Commission to ensure coordinated oversight between Congress and the Treasury.

### **Other investments to support industry:**

- Hollings Manufacturing Extension Partnership - \$50 million.
- Flexible federal hiring - to support the implementation of the programs outlined in the bill, the legislation provides temporary flexibility for federal agencies to hire for positions tasked with responding to COVID-19 efforts.

## Conclusion

Congressional leaders and Trump Administration officials have already signaled that more emergency relief packages will likely be required for the federal government to continue supporting local and state response efforts to COVID-19 and the economic impacts to individuals and the private sector. However, members in both chambers of Congress have expressed concerns related to traveling to and from Washington, making the timeline for any additional action on coronavirus response unclear. Both chambers of Congress have now recessed until April 20<sup>th</sup> giving policy makers, advocates and mostly importantly staff, the time to catch their breath, identify additional gaps that need to be filled, and begin thinking about the next supplemental package(s).

Beyond congressional activity, there will be considerable activity throughout the Administration as they interpret congressional intent behind each of these provisions. The Federal departments and agencies are now tasked with determining how to most quickly get funding out the door in what is hoped to be a flexible manner and how Congress intended.

During this historic time, federal, state and local activities remain fluid as developments around the global pandemic continue to unfold. The Bose Public Affairs Group team will continue to closely monitor these developments and keep you appraised, updated and informed.